

REMARKS

1. General Matters

1.1. Pending claims 1-27 have been cancelled. (Claims 28-30 were cancelled on September 5, 2000.) Claims 31-59 have been added by the present amendment.

1.2. The Examiner did not examine method claims 23-27 on the merits because they allegedly were improper multiply dependent claims. Any remaining multiple dependency was inadvertent. We had instructed the PTO to amend claim 23 by replacing "any of claims 1-22" with --claim 1--, but overlooked the "selected from 1-22" later in the claim. However, we also provided the following general instruction:

If, inadvertently, a proper multiple dependent claim has not been amended to reduce it to single dependency, please amend it to be dependent solely on the first-mentioned claim, or, if that is not possible, please cancel the claim and notify the undersigned.

In consequence, the PTO should have amended "1-22" to read just "1", eliminating the multiple dependency of 23 and rendering 23-27 examinable. Hence, the failure to examine 23-27 on the merits was improper, and the next action cannot be made final.

In any event, claims 23-27 have been replaced by new method claims 55-59.

1.3. The basis for new claims 31-59 is as follows:

Claim 31: Basis from p. 2, l 24-27 of the application; p 5, l 31-32; 6, l 17-18 and from p. 10, l 19-22.

Claim 32: Basis from p. 5, l 31-32; p 6, l 17-18 and from p. 10, l 19-22.

Claim 33: Basis from p 6, l 17-18 and l 32-33.

Claim 34: Basis from p. 7, l 2-3.

Claim 35: Basis from p. 6, l 17-18.

Claim 36: Basis from p. 6, l 17-24.

Claim 37: Basis from p. 7, l 6.

- Claim 38: Basis from p. 7, l 11-15.
- Claim 39: Basis from p. 7, l 17-19.
- Claim 40: Basis from p. 7, l 23-25.
- Claim 41: Basis from p. 7, l 27-28.
- Claim 42: Basis from p. 6, l 3-6.
- Claim 43: Basis from p. 11, l 13-22.
- Claim 44: Basis from p. 5, l 31-32.
- Claim 45: Basis from p. 10, l 21.
- Claim 46: Basis from p. 8, l 1-5.
- Claim 47: Basis from p. 8, l 13-17.
- Claim 48: Basis from p. 8, l 19-23.
- Claim 49: Basis from p. 10, l 21-22.
- Claim 50: Basis from p. 10, l 19-21.
- Claim 51: Basis from p. 11, l 14-22.
- Claim 52: Basis from p. 11, l 27-29.
- Claim 53: Basis from p. 8, l 7-9.
- Claim 54: Basis from p. 8, l 7-9.
- Claim 55: Basis from p. 2, l 20-p. 3, l 14; p 5, l 31-32; p. 6, l 17-18; p. 10, l 19-22 and from p. 15, l 9-15.
- Claim 56: Basis from p. 12, l 1-2.
- Claim 57: Basis from p. 12, l 3-5.
- Claim 58: Basis from p. 12, l 7-8.
- Claim 59: Basis from p. 12, l 10-13.

1.4. We take this opportunity to point out that the term "vegetable", as used in the specification and claims, is synonymous with "plant". This is consistent with the second definition given for "vegetable" in Webster's New Twentieth

Century Dictionary Unabridged, Second Ed., page 2024: "of, or having the nature of, plants in general; as the vegetable kingdom".

## 2. Prior Art Issues

The Examiner cites Tyrpin et al. and rejects previous claims 1-22 as being anticipated by Tyrpin et al.

Tyrpin et al. disclose a chewing gum having a hard coating, which comprises Erythritol. Tyrpin et al. also disclose that coated or un-coated high-intensity sweeteners (equivalent to the present high potency sweeteners) may be used in the chewing gum composition but **does not disclose** a chewing gum in which flavors are applied to the coating in the form of a powder.

Furthermore, previous claims 1-15 are rejected as being anticipated by Cherukuri et al. Cherukuri et al. disclose a chewing gum with a soft coating. The soft coating is prepared by applying a dusting mix comprising a sucrose powder to a sticky film of coating suspension on the chewing gum. In column 4, lines 1-6 it is described that a spray dried flavor may be added to the dusting mix and furthermore it is disclosed in column 6, lines 33-36 that a spray dried flavor may be pre-mixed with the dusting mix.

Cherukuri et al. **does not disclose** the use of encapsulated flavors and/or natural vegetable flavoring agents in the form of a powder as claimed in new claim 31. It should be noted that contrary to Cherukuri et al. the present invention does not require sucrose powder to be added together with the flavor powder.

Finally, previous claims 1-22 are rejected as being anticipated by Patel et al. Patel et al. disclose a chewing gum comprising a core portion and deposited on the surface of said core portion a rolling compound comprising a powdered ingredient which is a high potent sweetener.

In contrast to the present invention, Patel et al. relates to the use of non-coated chewing gums where dusty solids are used

in order to make the product more manageable during the process. Accordingly, Patel et al. relates to a different technical field within chewing gums. We believe that this difference is properly reflected in the present wording of the claims by use of terms well known in the field, such as the term "A coated chewing gum" and "coating material". These terms do not appear from Patel et al. We therefore feel confident that Patel et al. is not prejudicial to the novelty or inventive step of the present invention.

### 3. Definiteness Issues

We believe that most of the definiteness issues have been mooted by the cancellation of the prior claims.

3.1. The new claims continue to use the term "vegetable flavoring agent" to encompass fruit flavors. This is proper for the reasons explained in section 1.4 above.

3.2. The new claims avoid use of the terminology "such as", "preferable", "preferably", "more preferred" and "less preferred".

3.3. We believe that the term "high potency sweetener" will be meaningful for the person skilled in the art. The general interpretation of this term is a sweetener which has a relative sweetness of at least 10 times the sweetness of sucrose. Examples of the relative sweetness of several sweeteners can be found below:

| Sweetener                      | Sweetness relative to sucrose |
|--------------------------------|-------------------------------|
| Sucrose                        | 1                             |
| Xylitol                        | 1                             |
| Sorbitol                       | 0,6                           |
|                                |                               |
| <b>High potent sweeteners:</b> |                               |
| Aspartame                      | 180                           |
| Acesulfame K                   | 200                           |

|               |        |
|---------------|--------|
| Saccharine    | 300    |
| Thaumatococin | 30-300 |
| Sucralose     | 600    |

Source: <http://food.oregonstate.edu/sugar/sweet.html>.

3.4. The Markush-group language in claim 36 avoids the problems associated with former claim 3. We have also modified the language so that "mixtures" need not be recited as a member of the Markush group.

3.5. With regard to former claim 10, the phrase "e.g... raspberry" was deleted on September 9, 2000. Corresponding claim 40 omits the phrase, too.

3.6. The claim (42) corresponding to former claim 12 omits the "and fruit flavors such as".

3.7. The claim (47) corresponding to former claim 14 omits "and salts thereof".

3.8. Former claims 17, 20 and 22's recitation of "selected among" was corrected on September 9, 2000.

3.9. The claim (51) corresponding to former claim 17 omits the "preferably" clause. Claim 17 is cancelled.

3.10. Claim 20 has been cancelled, so identification of the "and" and "such as" to be deleted is now moot.

3.11. The claim (48) corresponding to former claim 15 recites a "functional substance" instead of the.

3.12. With regard to claim 52 (and former claim 18), the intent of former 18 was that the active substance was presented in liquid form, i.e., it was either a liquid in its own right, or was dissolved or suspended in a liquid carrier, at the time of its incorporation into the coating. It was not intended to imply that it remained a liquid after such incorporation. New claim 52 has been drafted in order to better communicate applicant's intent.

3.13. The rejection specific to former claim 19 does not appear applicable to any of the new claims.

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3.14. In view of the rejection of former claim 21, corresponding claim 53 specifies that the salt is part of the coating.

3.15. The objections to claims 1-27 are moot as those claims have been cancelled.

Respectfully submitted,

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